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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,954	01/26/2004	David Miles	C241 1010.2	1774

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EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT	PAPER NUMBER
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1616

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08/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/630,954	MILES, DAVID	
	Examiner	Art Unit	
	Kristie L. Brooks	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 66-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 66-98 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species: In claim 66, Applicant is requested to select an active component from the group consisting of insecticides, acaricides, virucides, bactericides, fungicides, plant growth regulators, and herbicides. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

A) If Applicant elects a insecticide, Applicant is required under 35 U.S.C. 121 to elect a single insecticide from the group fenvalerate (alpha-cyano-3 -phenoxybenzyl-2-(4-chlorophenyl)-3-methylbutanoate), baythroid (cyano-4-fluoro-3-phenoxybenzyl-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate), DDVP (2,2-dichlorovinyl dimethyl phosphate), sumithion (MEP) (dimethyl 4-nitro-m-tolyl phosphorothioate), malathion (S-1,2-bis(ethoxycarbonyl)ethyl dimethyl phosphorodithioate), dimethoate (dimethyl S-(N-methylcarbamoylmethyl) phosphorodithioate), elsan (S-[alpha\-(ethoxycarbonyl)benzyl] dimethyl phosphorodithioate), baycid (dimethyl 4-methylthio-m-tolyl phosphorothioate), bassa (O-sec-butylphenyl methylcarbamate), MTMC (m-tolylmethylcarbamate), meopal (3,4-dimethylphenyl-N-methylcarbamate), NAC (1-naphthyl methylcarbamate), Methomyl (S-methyl-N-(methylcarbamoyloxy)thioacetimidate), Cartap (SS'-2-dimethylamino

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trimethylene bis-(thiocarbamate)), pyrethrins, piperonyl butoxides, rotenones, nicotine (3-(1-methyl-2-pyrrolidinyl)pyridine sulfate) preparations, diflubenzuron (1-(4-chlorophenyl)-3-(2,6-difluorobenzoyl) urea), teflubenzuron (1-[3,5-dichloro-2,4-difluorophenyl]-3-(2,6-difluorobenzoyl) urea), chlorfluazuron (1-[3,5-dichloro-4-(3-chloro-5-trifluoromethyl-2-pyridiloxyphenyl)-3-(2,6-difluorobenzoyl) urea, buprofezin (2-tert-butylimino-3-isopropyl-S-phenyl-3,4,5,6-tetrahydro-2H-1,3,5-thiadiazin-4-one), and fenoxycarb (ethyl 2-(4-phenoxyphenoxy)ethylcarbamate) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 66 and 73 are generic.

B) If Applicant elects an acaricide, Applicant is required under 35 U.S.C. 121 to elect an acaricide from sumiitol (2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazine-3-(2H)-one), acricid (2,4-dinitro-6-sec-butylphenyldimethylacrylate), chloromite (isopropyl 4,4-dichlorobenzylate), akar (ethyl 4,4'-dichlorobenzilate), kelthane (2,2,2-trichloro-1,1-bis(p-chlorophenyl)ethanol), citrazon (benzoic 3-chloro-N-ethoxy-2,6-dimethoxybenzimidic anhydride), omite (2-(p-tert-butylphenoxy)cyclohexyl propyn-2-yl sulfite), osadan (bis[tris(2-methyl-2-phenylpropyl)tin]oxide), hexythiazox (trans-5-(4-chlorophenyl)-N-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide), and amitraz (N,N-bis(2,4-xilyliminomethyl)methylamine) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 66 and 75 are generic.

C) If Applicant elects a virucide, bactericides or fungicides, Applicant is required under 35 U.S.C. 121 to elect an virucide, bactericides or fungicide from dithane (zinc ethylenebis(dithiocarbamate)), manzeb (manganese ethylenebis(dithiocarbamate)), thiram (bis(dimethylthiocarbamoyl) disulfide), manzeb (complex of zinc and manganese ethylenebis(dithiocarbamate)), bisdithane (bisdimethyl dithiocarbamoyl zinc ethylene bisdithiacarbamate), propineb (polymeric zinc propylenebis(dithiocarbamate)), benomyl (methyl 1-(butylcarbamoyle)-2-benzimidazole carbamate) thiophanate-methyl (dimethyl(4,4'-o-phenylenebis(3-thioallophanate))), vinclozolin (3-(3,5-dichlorophenyl)-5-methyl-5-vinyl-1,3-oxazolidine-2,4-dione), iprodione (3-(3,5-dichlorophenyl)-N-isopropyl-2,4-dioxoimidazolidine-1-carboxamide), procymidone (N-(3,5-dichlorophenyl)-1,2-dimethylcyclopropane-1,2-dicarboximide), anilazine (2,4-dichloro-6-(o-chloroanilino)-1,3,5-triazine), triflumizole ((E)-4-chloro- α , α , α -trifluoro-N-(1-imidazol-1-yl-2-propoxyethylidene)-o-toluidine), metalaxyl (methyl-N-(2-methoxyacetyl)-N-(2,6-xylyl)-D,L-alaninate), bitertanol (all-rac-1-(biphenyl-4-yloxy)-3,3-dimethyl-1-(1,2,4-triazol-1-yl)butan-2-ol), pyrifenoxy (2',4'-dichloro-2-(3-pyridyl)acetophenone-(E)-O-methyloxime), fenarimol (2,4'-dichloro- α -(pyrimidin-5-yl)benzhydryl alcohol), triforine (1,4-bis-(2,2,2-trichloro-1-formamidoethyl)-piperazine), guazatine iminoctadine (1,1-iminodi(octamethylene)diguanidinium triacetate), oxine-copper, antibiotic bactericides, triadimefon (1-(4-chlorophenoxy)-3,3-dimethyl-1-(1,2,4-triazol-1-yl)-2-butanone), isoprothiolane (diisopropyl-1,3-dithiolan-2-ylidenemalonate), daconil (tetrachloroisophthalonitrile), pansol (5-ethoxy-3-trichloromethyl-1,2,4-thiadiazole), fthalide (4,5,6,% tetrachlorophthalide), kitazin-P (0,0-

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diisopropyl-phosphorothioate), hinosan (ethyl S,S-diphenylphosphorodithioate), probenazole (3-allyloxy-1,2-benzisothiazol 1,1 -dioxide), captan (N\-(trichloromethylthio)-4-cyclohexene-1,2-dicarboximide), fosetyl (aluminum tris(ethylphosphonate)), and quaternary ammonium compounds for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 66 and 74 are generic.

D) If Applicant elects plant growth regulator, Applicant is required under 35 U.S.C. 121 to elect an plant growth regulators from the group of cacodylic acid and its sodium salt, MH (maleic hydrazide), ethephon (2-chloroethylphosphonic acid), Folex (S,S,S, tributyl phosphorothioate), Dropp (thidiazuron), Pix (mepiquat chloride), paraquat, diquat, endothall, chlorates, ethephon, cacodylic acid and its sodium salt, MSMA, diuron, dimethipin, monocarbamide, carfentrazone, cyclanilide, thidiazuron, organophosphates, dimethipin, ethylene, and auxins for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 66 and 70 are generic.

E-1) If Applicant elects a herbicide, Applicant is required under 35 U.S.C. 121 to elect a herbicide from the group consisting of downwardly mobile herbicides, amino acid inhibitors, amino acid inhibitors, pigment inhibitors, grass meristem destroyers, lipid biosynthesis inhibitors, contact herbicides, cell membrane destroyers, upwardly mobile only herbicides, photosynthetic inhibitors, and auxin growth regulators, phenoxy

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compounds, benzoic acid derivatives, picolinic acid derivatives, glyphosate, sulfosate, sulfonyl ureas, imidazolinones, sulfonamides, aryloxyphenoxypropionates, cyclohexanediones, bBipyridyliums, diphenyl ethers (nitrophenyl ethers), triazines, uracils, phenylureas, nitriles, acid amide-based herbicides for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 95-96 are generic.

E-2) If Applicant elects a herbicide from the group consisting of downwardly mobile herbicides, amino acid inhibitors, amino acid inhibitors, pigment inhibitors, grass meristem destroyers, lipid biosynthesis inhibitors, contact herbicides, cell membrane destroyers, upwardly mobile only herbicides, photosynthetic inhibitors, and auxin growth regulators, phenoxy compounds, benzoic acid derivatives, picolinic acid derivatives, glyphosate, sulfosate, sulfonyl ureas, imidazolinones, sulfonamides, aryloxyphenoxypropionates, cyclohexanediones, bBipyridyliums, diphenyl ethers (nitrophenyl ethers), triazines, uracils, phenylureas, nitriles, acid amide-based herbicides ***Applicant is required under 35 U.S.C. 121 to elect a herbicide compound***, selected from stam (3',4'-dichloropropionanilide, DCPA), alachlor (2-chloro-2',6'-diethyl-N-(methoxymethyl)-acetanilide), DCMU (3-(3,4-dichlorophenyl)-1,1-dimethylurea), rinuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea), thifensulfuronmethyl(methyl-3-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)carbamoylsulfamoyl)-2-tanoate), flazasulfuron (1-(4,6-dimethoxy pyrimidin-2-yl)-3-(3-trifluoromethyl-2-pyridylsulfonyl) urea), paraquat dichloride (1,1'-dimethyl-4,4'-

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bipyridinium dichloride), diquat dibromide (6,7-dihydrodipyride[1,2-a:2', l'c]-pyrazinediium dibromide), bromacil (5-bromo-3-sec-butyl-6-methyluracil), gesatop (2-chloro-4,6-bis(ethylamino)-1,3,5-triazine), simetryn (2,4-bis(ethylamino)-6-methylthio-1,3,5-triazine), DBN (2,6-dichlorobenzonitrile), trifluralin (alpha,alpha, alpha-trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine), thiobencarb (Saturn) (S-p-chlorobenzyl diethylthiocarbamate), MCC (methyl-3,4-dichlorocarbonylate, NIP (2,4-dichlorophenyl-p-nitro-phenyl ether), PCP (sodium pentachlorophenoxide), MDBA (3,6-dichloro-2-methoxybenzoic acid dimethylamine salt), 2,4-D sodium salt (sodium 2,4-dichlorophenoxyacetate), 2,4 D esters, mapica ([4-chloro-o-toluyloxy]aceto-o-chloroanilide, glyphosate (N-(phosphonomethyl) glycinate, bialaphos (sodium salt of L-2-amino-4-[(hydroxy(methyl)phosphinoyl]-butylalanyl-N-alanine), glufosinate (ammonium DL-homoalanine-4-yl(methyl) phosphinate), TCA sodium salt (sodium trichloronate), hydrogen peroxide, and glufosinate for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 97-98 are generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

Paul H. London
Primary Examiner
All 1616